

Featured Articles

*Scribes Cohosts Successful
International Conference*

The Future of Scribes

*How to Maximize Your Article's
Impact*

Scribes Cohosts Successful International Conference

From May 21 to 23, lawyers, judges, plain-language practitioners, and experts converged on the National Press Club in Washington, D.C. Scribes cohosted an international conference on plain language with Clarity, an international association promoting plain legal language, and The Center for Plain Language. The Center is a U.S. organization that spearheaded the Plain Language Act of 2010. As cohost of the third biannual Clarity Conference, Scribes was well represented by those attending and those presenting.



Louis Fortier (Quebec, Canada)

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The President's Column: The Future of Scribes

by Steven Smith, Dean
California Western School of Law

Thanks for your help! More than a year ago I asked for your help as the Scribes board of directors undertook a formal planning process. A plan has now been adopted that looks to a bright future for our organization.

The board reaffirmed the importance of Scribes' traditional goals to promote excellent legal writing and to encourage "a clear, succinct, and forceful style in legal writing." The board also recognized that while this mission remains important, new tools are now available to promote the mission (e.g., technology that makes communication easier, faster, and cheaper; improved legal-writing programs in law schools; and a growing literature about clear writing). The organization also faces new challenges (e.g., the reluctance of many new lawyers and other professionals to join professional organizations, the sad state of legal writing in some areas of the profession, and the potential for new technology to discourage clear writing).

How does Scribes avoid the challenges, pitfalls, and take advantage of the new tools and opportunities?

Based on your suggestions and a year's worth of deliberations, and under the direction of Dean Darby Dickerson, the board answered that question with three priorities—something old and something new. What follows is a summary of the high points of the Strategic Plan that the board of directors adopted.

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Former executive director Joe Kimble gave a popular master class in legal writing using plain language. Current executive director Norm Plate attended the conference. President of Scribes Dean Steven Smith gave a welcome speech to a plenary session of the conference on the first day. A Scribes member, Professor Christopher Trudeau of Thomas Cooley Law School, presented new research about the plain-language preferences of legal clients. And Bryan Garner, member of the Scribes board of directors, gave the closing speech at the plenary session that ended the conference’s third and final day.

From the opening reception on Sunday afternoon to the final speech, the conference was a success. More than 140 people attended, and they came from more than 20 countries. Conference presenters were from Sweden, Canada, the Netherlands, the U.S.A., Hong Kong, Australia, and Mexico—to name just a few.

The conference included the dinner and third annual presentation of the ClearMark Awards on Tuesday evening at the National Press Club. Every year, The Center for Plain Language in Washington, D.C., selects winners from government, business, and nonprofit organizations that have used plain-language principles in their materials. The judges reviewed brochures, websites, and even signs submitted for the contest. This year’s overall winner was the National Center for Education Statistics for its National Assessment of Educational Progress “Tools on the Web” brochure.

This marked the first time that Scribes cosponsored the conference with Clarity and The Center for Plain Language.



Josiah Fisk (USA)



Himanshu Kumar, Joe Kimble, Steve Smith, and Norm Plate



Cheryl Stephens (USA)



Nathalie Parés, Ingrid Olsson, and Ingrid Herbert (Sweden)



Eamonn Moran (Hong Kong)



Don Byrne (former executive director of The Center for Plain Language) and Steve Smith



Stéphanie Roy and Sarah Dougherty (Canada)



Duncan Berry (Hong Kong)



Neil James (Australia) and Christine Mowat (Canada)

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Submit Your Articles

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Deadlines

Summer	August 1
Fall	October 15
Winter	January 15

Law-Review Award Committee Remarks

by Mary Bowman

Remarks by Mary Bowman, Chair of Scribes' Law-Review Award Committee, at the Scribes Law-Review Dinner held March 29, 2012, in Providence, Rhode Island, at the National Conference of Law Reviews. The conference was hosted by Roger Williams School of Law.

Good evening and welcome to the Scribes Law-Review Dinner. My name is Mary Bowman. I am a professor at Seattle University School of Law, and I am also the chair of the Scribes Law-Review Award Committee. I am here to present the 2012 Scribes Law-Review Award.

First, I want to thank tonight's sponsor, WestlawNext. We appreciate its long-standing support of the Scribes Dinner.

Next, I want to tell you about Scribes—The American Society of Legal Writers, which was founded over 50 years ago. Scribes is a national organization of legal writers, and its goals include fostering a community among those who write about the law.

As you all know from being both law students and law-journal editors, too much legal prose is convoluted, pompous, dull, uninspired, and otherwise uninspiring. But legal writing does not have to be that way, and Scribes' mission is to counteract those problems by fostering a clear, succinct, and forceful style of legal writing.

Scribes' members include judges, lawyers, law professors, deans, and legal editors, including student editors of law reviews. Journal editors have a particularly important role in fulfilling the mission of Scribes, both as you write your own articles and as you select and publish other authors' scholarship. As you make your decisions about which articles to publish, please consider the quality of the writing. And as you edit those articles, help your authors improve their writing as well as their ideas.

Every law-review editor in this room is eligible for membership in Scribes, and we even have a special dues category for law students: just \$15 a year. In return, you will receive future issues of *The Scribes Journal*

of Legal Writing, like the one that is at your seat tonight. The edition of *The Scribes Journal* that you received tonight contains interviews with current United States Supreme Court Justices talking about how they write and how they view writing; future editions will deal with a variety of writing topics. If you join Scribes, you can also then join one of the many active committees, and you can show your commitment to good legal writing by noting your membership on your résumé. Please go to the Scribes website, www.scribes.org, and join.

Now I would like to tell you a little bit about this award. It goes to the best student-written law-review note or comment published in the preceding year. This year's award is our 26th annual award, and we received 90 entries this year. Please be sure that your journal submits an entry next year. These 90 entries were read by the terrific legal-writing faculty at Thomas Cooley Law School; they selected 13 finalists. These articles covered a wide range of subject matters, including intellectual property, civil procedure, health law, and ethics.

These "best of the best" entries were then reviewed by the Scribes Law-Review Award Committee, which picks the winning article. I was joined on that committee by University of California, Davis law professor Richard Wydick, Professor Glen-Peter Ahlers (Barry University), Steven Feldman (legal adviser for the U.S. Army Corps of Engineers), and Professor Richard Leiter (University of Nebraska, Lincoln). We considered the importance of the topic and the author's thesis, the quality of the research, and of course the quality of the writing.

After a lively discussion, we selected Michael Vincent's article, "Computer-Managed Perpetual Trusts," as the winner of this year's award. Mr. Vincent is a student at the Sandra Day O'Connor College of Law at Arizona State University, and his article was published in *Jurimetrics*, the oldest journal dedicated to the topics of law and science, housed at ASU.

Mr. Vincent's article stood out for a number of reasons. First, he took a topic that he acknowledged seems a bit far-fetched at first, and he made it compelling. The article deals with computer-managed "robo-trusts," trusts that could last forever, with artificial-intelligence computing allowing the creator's intent to be implemented indefinitely. Robo-trusts will provide the ultimate in dead-hand control. Mr. Vincent capably and clearly explained the psychology that would lead trust

creators to want such a thing, as well as the legal and technological advances that make robo-trusts possible and even likely.

Second, the article did an excellent job drawing these strands together and exploring the legal aspects of this issue. The article contains a particularly interesting discussion of whether such trusts will violate public policy, when that decision would be made, and how human trustees will continue to play roles in both the legality of these trusts and their continued operation. Finally, the article concluded with a call for reexamining the legal structures that allow robo-trusts to exist.

Mr. Vincent achieved one of the most difficult things to do in legal writing: he took technical, complicated material and presented it in a clear, accessible, and interesting way. For these reasons, on behalf of Scribes, I am delighted to honor Mr. Vincent as the 2012 winner of the Scribes Law-Review Award.

In addition, I am delighted to honor *Jurimetrics* for publishing Mr. Vincent's excellent article. Many thanks to the ABA and *Jurimetrics* for arranging reprints of Mr. Vincent's article, which are available for you to pick up as you leave the dinner tonight. I also want to specially honor the Sandra Day O'Connor College of Law for producing such excellent legal writers. That school's other law review, the *Arizona State Law Journal*, produced last year's winner of this award, as well as another finalist for this year's award. And last year's *Jurimetrics* article was also a finalist. It is very rare for a school to have two finalists in a single year; to have done it two years in a row is truly impressive.

Law-Review Award Remarks

by Michael Vincent

Thank you, Scribes and the judges committee, for honoring me with this distinguished award. I am particularly pleased that this is the second year in a row that a student from Arizona State University has won this award, which I believe is a testament to the superb writing instructors that we have at ASU. I thank my first-year writing professors Susan Chesler and Stacey Dowdell, and also the professors who assisted me with my article, Professor John Becker and Dean Douglas Sylvester.

Let me give you some background about my article. My article is a bit different from the typical law-review article. I didn't write on a narrow issue of constitutional law—nor on a circuit split in some hot scholarly area. My article looks to the future, literally. It discusses the implications of perpetual trusts that are managed by computers. When I chose to join *Jurimetrics*, I knew that if I were going to have to spend hundreds of hours writing a scholarly legal article, I wanted to have a really interesting topic. As every law-review editor knows, the hardest part about writing a note or comment is finding a topic. I would love to stand here and claim that I had a brilliant motivation for picking my topic—but I didn't. It was a few days before topics were due, and I was on my way to my first class of the semester, Decedents' Estates. I enjoy computer programming, and the possibility of putting a computer program inside a will just popped into my mind. I thought I was crazy. But I asked my professor, who told me that he would use a trust instead of a will, and from there I was off.

The crux of my argument is that two very different developments are simultaneously occurring in this country: first, numerous states have recently abrogated the rule against perpetuities, the infamous rule that effectively limits the duration of noncharitable trusts. This means that trusts can now last forever, or at least for a very long time. Second, computer scientists are hard at work developing ever-advanced forms of artificial intelligence. Consider, for example, the autonomous Google cars that have been driving

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(Law-Review Award Remarks *continued from page 5*)

themselves around California for the past several years. What do we do when these areas accidentally intersect? What should society do when someone wants to hand control over his trust to a machine—a machine that can manage it with ruthless determination for practically eternity?

During the process of researching and developing my topic, I realized that this would soon become a serious legal problem. My footnotes are filled with reported cases where individuals have set up all sorts of trusts in attempts to obtain immortality. These attempts failed because the rule against perpetuities was at the time still in effect. The quest for immortality, however, remains. People are afraid to die, and the beginning of my article explores how this psychological fear has been expressed historically—attempts at perpetual trusts, attaching one’s surname to a charitable foundation, or Ted Williams’s frozen head. It’s stored right here in Arizona. The evidence is pretty clear that people love to use technology to attempt to escape death. It is the responsibility of our legal system to place limits on what testators can and cannot do, but now that we permit perpetual trusts, nothing but a few years of technological development stands in the way of robo-trusts, as I call them. And we all know how fast technology moves. So my article applies existing trust law to these new types of trusts. For example, the purpose of a trust can’t be so indefinite that the trust can’t be enforced. But if a

computer is running the trust, how do you know what these purposes are? Are they necessarily indefinite, or is it enough to say in the trust document that the purpose is whatever the computer wants? This is the type of question that computer-managed trusts raise, and I hope you find the topic as fascinating as I do. I knew I had to be on to something when the *Jurimetrics* faculty adviser commented that I had managed to make the rule against perpetuities interesting.

This brings me to the last point I would like to make—about effective legal writing. One of the problems facing the legal profession is that our writing is often perceived to be boring and lifeless because all too often we believe that the law is boring and lifeless. We should write as if the law is the most interesting subject in the world. Let your readers find your writing boring for their own reasons. And don’t be afraid. We are often too afraid and risk-averse to write in a lively (though still serious) manner, or to improve upon what’s been written before. Just a few days ago, I saw a do-it-yourself form contract for the sale of a car between two private parties. The first words of this contract were, in all-capital letters, “BE IT KNOWN.” Maybe the buyer is supposed to run down the street afterward, shouting, “BE IT KNOWN that I bought a new car.” Who knows how many people are, at this very moment, enslaved to a meaningless 19th-century phrase because a drafter was too afraid to find a better way to begin a contract.

On that note, I say “be it known” that I thank you very much for this award.

Help Scribes Grow

Would you be willing to help promote Scribes? Do you have friends or colleagues who might like to join? Will you be speaking at or attending any program involving legal writing or legal language? We would be happy to send you some of the attractive Scribes brochures to distribute. Just send an e-mail to our executive director, Norman E. Plate: platen@cooley.edu.

How to Maximize Your Article's Impact

by Norman Otto Stockmeyer*

Why Stop Now?

Your law-review article has been researched, written, edited, and (hurray!) published. You have archived it in the Social Science Research Network (SSRN) as instructed in “Do You SSRN?” in the Winter 2011 issue of *The Scrivener*, available at <http://ssrn.com/abstract=1727484>. That makes the article available to potential readers who do not have access to Lexis and West’s “walled gardens.” And to track citations to your article, you have created your Google Scholar Citations profile (see “Meet Google Scholar Citations,” in the Winter 2012 *Scrivener*, available at <http://ssrn.com/abstract=2024961>).

After all that work, why stop with one article? With some imagination, you may be able to develop one or more spin-off pieces for other periodicals. Sometimes it may be a reprinting of your article in full. More often, it will take the form of an excerpt or abridgment.

Examples

An example of a full reprinting might be an article that first appeared in a traditional law review that is then reprinted (with appropriate permission and attribution, of course) in a more specialized journal. On the other hand, your law-review article may be too long and footnote-laden for reprinting in full. So it will need to be distilled before it is appropriate for a more practice-oriented readership.

Here is an extreme example of article spinning: in 2007, the author published an article on the history behind a famous contracts case in the *Cooley Law Review*. The article was later reprinted in full in the *Green Bag Almanac and Reader* and in *Stereoscope*, a publication of the Historical Society of the U.S. District Court for the Western District of Michigan. Excerpts from the article were published in the Michigan Supreme Court Historical Society’s newsletter *Society Update*, the Historical Society of Michigan’s magazine *Chronicle*, and this, *The Scrivener*. One manuscript became six articles.

A less extreme example involves a history of Scribes that I coauthored for *The Scribes Journal of Legal Writing*. Shorter spin offs were then published as columns in the *Michigan Bar Journal* and the *Illinois Bench & Bar* newsletter. Spin, spin, spin.

Where to Look

In addition to general-purpose bar publications such as state-bar journals, do not overlook the many, more-specialized section periodicals published by the American Bar Association and many state bars. Their editors are hungry for good manuscripts in their fields and are more likely to consider publishing full or partial reprints.

The American Bar Association alone publishes almost 60 journals, magazines, and newsletters. The New York State Bar Association has 24 section publications. (The *ABA Journal*, read by half of the nation’s one million lawyers, would be a prime placement, but forget about it. In recent years its articles have been written exclusively by staff reporters or freelance journalists.)

Then there are local bar magazines and newsletters, generally monthlies. Their editors too are hungry for copy. Finally, consider the weekly legal newspapers found in many metropolitan areas. Typically they publish one or more bylined articles to wrap around the legal notices. You might be surprised at the extent of their readership.

How to Proceed

For such second- and third-tier periodicals, get a hold of several back issues. Sometimes they are available through the sponsoring organization’s website. (For example, you can access back issues of *The Scrivener* at www.scribes.org/scrivener.) Skim the issues to see what kinds of articles they carry, at what length, with or without footnotes, their citation style, etc. It is also wise to obtain manuscript-submission instructions. They might be printed in the periodical itself or be available on a website; otherwise, e-mail the editor.

After you have massaged your article into shape, feel free to change the title (just cite the original title in your attribution footnote). Then give it one more spell- and grammar-check. In the absence of instructions otherwise, transmit it to the editor as a Word document, using 12-point Times New Roman, along with a transmittal e-mail explaining the article’s significance

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and derivation. Also supply reprint permission (if necessary), a short author bio, and a high-resolution photo. The easier you make the editor's task, the more likely you will see your work in print.

Publicize Your Article

Another way to increase the readership of your article is to publicize its publication. If your article breaks new ground, send out a news release announcing the results of your research. The emphasis should not be on "So-and-so published an article." Rather, say, "A recent article found that [or "advocates that"] . . ." Send the release to the legal media in your area. Or ask your firm or school's PR person to do it for you.

Some organizations and institutions list publications by their members in their newsletters. Scribes does, as do the American Bar Foundation Fellows and many undergrad and law-school alumni magazines. Send an announcement of your article's publication to those you belong to.

It's likely that a blog covers your topic. Blogs now blanket over 50 law-school subjects. They are listed at <http://lawprofessors.typepad.com>. A comprehensive directory of law blogs can be found at www.abajournal.com/blawgs/. Some blogs will plug important new scholarship if it comes to the blogger's attention. So bring your article to bloggers' attention.

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You did the work; now reap the reward. Use these strategies to maximize your article's readership and its impact. And burnish your reputation as an expert.

* The author is a past president of Scribes and a frequent contributor to a wide variety of legal journals and newsletters. This article is available at <http://ssrn.com/abstract=2064756>.

The Winners!

In our last issue, president of Scribes Dean Steven Smith announced a contest: he asked Scribes members to send him their ideas about how to recognize and encourage good writing or discourage bad writing. We're pleased to announce five winners and summarize their winning suggestions below. Their free copies of that special book about legal writing are on their way—as promised by Dean Smith.

Anna Hemingway sent a simple suggestion: "Praise and acknowledgment cost nothing, and they take little time. Yet when they are given in an honest manner, they can make a world of difference for legal writers." She believes that the legal-writing community should reward good writing with simple praise and acknowledgment rather than contests and prizes. Teachers, editors, readers, friends, and colleagues should praise good writing when they see it. Ms. Hemingway listed three reasons why this simple yet elegant solution is effective: (1) praise and acknowledgment are rare in the legal profession and thus valued; (2) they make the praised, and the ones praising, more optimistic; and (3) they encourage more good writing.

Professor William J. Aceves sent us this: "I was reading the Scribes newsletter and had a thought about the annual writing awards. I noticed that Scribes offers awards for student brief, student law-review article or note, and best book on law. What about offering an award for best appellate brief? This award could apply to any appellate brief, whether filed in state or federal court."

Peter Siviglia suggested that we turn our attention to contracts. "Briefs, memoranda of law, and articles do not produce litigation, but poorly written contracts do. . . . A poorly written contract is a playground for litigators. The discipline of writing contracts well requires more time and attention." Mr. Siviglia referred us to his article in Volume 10 of *The Scribes Journal* and his other publications on drafting contracts that are referenced in his article. And he suggested that if a contest is appropriate, then we should assign drafting problems to teams of up to four students because "the collaborative process will produce better results."

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(The Winners *continued from page 8*)

Doyle Baker suggested that Scribes hold a contest patterned on the Bulwer-Lytton Fiction Contest, a bad-writing contest that rewards the worst opening sentence for an imaginary novel. The contest is named for a Victorian author who began one of his novels, “It was a dark and stormy night . . .” No more need be said.

In its first year, the Bulwer-Lytton contest received more than 10,000 entries. A sample: “Safeway wasn’t open when Keegan pulled his Chevy into the lot, its valves chattering, gun-blue cracked-ring smoke

sputtering from its tailpipe, to get eggs.” As Mr. Baker wrote, “A bad legal-writing contest would mock bad legal writing without mocking those who did the bad writing. The winners would be proud of their writing rather than embarrassed. The contest would also be good for a few laughs.”

Finally, **Lisa Hasday** suggested board certification for legal writing. She wrote, “Legal writing might improve if lawyers were able to become board-certified in legal writing based on the quality of their writing.”

(President’s Column: The Future of Scribes *continued from page 1*)

Priority 1

Scribes will continue to promote excellent modern legal writing. Scribes will continue to publish the journal and newsletter, sponsor awards for excellent writing, and honor outstanding law students. The organization may also point to especially bad legal writing. Scribes will increasingly develop, distribute, and update guides, standards, and advice about legal writing. To accomplish these goals, we will seek relationships with other like-minded organizations.

Priority 2

Scribes strives to be the largest, most influential legal-writing organization in the United States. Membership is the heart of Scribes’ success, and we seek to have 800 individual members and 80 institutional members within five years. The reluctance of new professionals to join means that Scribes should consider new categories of membership, including institutional membership for law firms. The board will also survey its members to determine what benefits and services are most valued and respond with new benefits to members.

Priority 3

Scribes will use the most effective means to promote the organization, the organization’s work, and excellent legal writing. Scribes seeks to increase the involvement of the membership through service activities and improved communications with members (e.g., using social media, the website, and publications). It will

also feature the work and advice of outstanding legal writers.

This is but a summary of the entire plan. Please contact the home office (mcalpinb@cooley.edu) for an early copy of it. It will also be on the website in due course. Your ideas for making these goals a reality are most welcome.

This is my final column as president of Scribes. Following our annual meeting in Chicago in August, Dean Darby Dickerson will become president. And what an annual meeting it will be! We will meet in the Crystal Room of the Union League Club of Chicago, August 3, from noon to 2:00 p.m. We will present a Scribes Lifetime-Achievement Award to Justice John Paul Stevens. Our speaker will be Judge Diane Wood of the U.S. Court of Appeals for the Seventh Circuit. Make plans to attend what promises to be a memorable event by e-mailing Rebecca McAlpine at mcalpinb@cooley.edu by July 23.

I am most grateful for two exciting and enjoyable years as president of Scribes. Thanks to the members of Scribes for your support. Our board of directors is a great group of professionals who take seriously the task of governing the organization and promoting clear writing. Special thanks to home-office staff Norm Plate and Rebecca McAlpine, along with Joe Kimble and Jane Siegel, who make Scribes work on a day-to-day basis.

Scribes is a wonderful organization. It is an honor for me to be part of it.

2012 Scribes Brief-Writing Award Screeners

Scribes would like to thank these busy people who took time to read and screen the many briefs that were submitted for the 2012 Scribes Brief-Writing Award. A special thank-you to those who have helped us with this award year after year. And a special welcome and thank-you to our first-time screeners.

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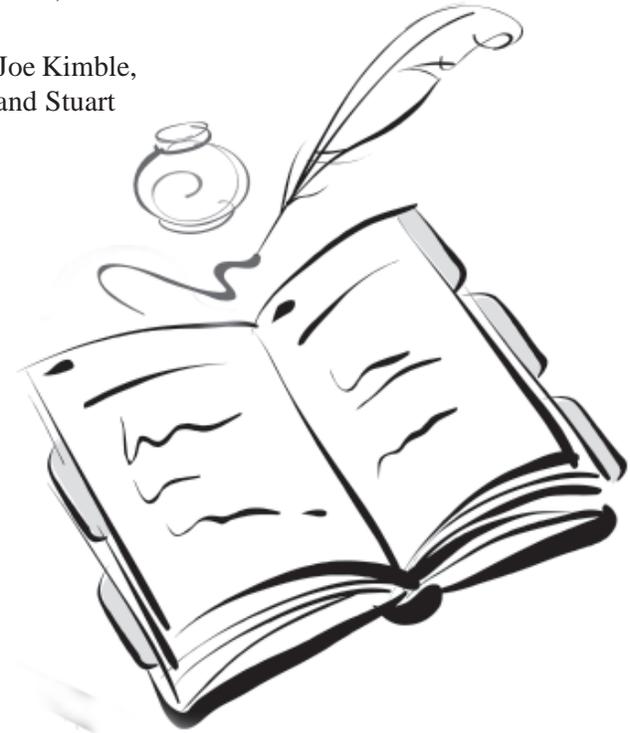
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